

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail Contracts
Priority Mail—Non-Published Rates 10
(MC2011-15)

Docket No. CP2011-51

ORDER GRANTING MOTIONS FOR LATE ACCEPTANCE
AND REQUIRING QUARTERLY CERTIFICATIONS

(Issued January 26, 2017)

I. INTRODUCTION

On February 3, 2011, the Commission authorized the Postal Service to enter into Priority Mail—Non-Published Rates (PMNPR) agreements based on a model contract, subject to several requirements.¹ As described herein, the Commission grants the three pending motions for late acceptance of the Postal Service's filing of 242 PMNPR agreements outside the timeframe required by Order No. 661. The Commission also requires additional information to be filed under seal by February 3, 2017, to bring five expired PMNPR agreements into compliance with other requirements of Order No. 661. The Commission also requires the Postal Service to file quarterly certifications going forward in this docket to monitor compliance with all requirements of Order No. 661.

¹ Docket Nos. MC2011-15 and CP2011-51, Order Approving Addition of Priority Mail—Non-Published Rates 1 to the Competitive Product List, February 3, 2011, at 8-10 (Order No. 661).

II. BACKGROUND

Non-Published Rates products, including PMNPR, give the Postal Service flexibility to enter into agreements that meet set conditions without seeking prior approval from the Commission. In Order No. 3714, the Commission stated that “[i]n light of the additional flexibility afforded to the Postal Service with these types of agreements, the associated reporting requirements are a critical part of the regulatory regime.”²

On December 28, 2016, the Postal Service filed notice of entering into 238 PMNPR agreements with effective dates ranging from January 17, 2016, through December 16, 2016.³ The Postal Service also filed a motion requesting that the Commission accept the late filing.⁴ Finding that the December 28, 2016 Motion “lack[ed] adequate justification demonstrating good cause for extending the time for filing notice of these 238 PMNPR agreements,” as required by 39 C.F.R. § 3001.16, the Commission directed the Postal Service to provide additional information. Order No. 3714 at 3. On January 6, 2017, the Postal Service explained that the Commission should not cancel the affected PMNPR agreements and described the steps it will take to prevent future untimely filings in this docket.⁵ The Postal Service also filed a motion requesting that the Commission accept the late filing of three additional PMNPR agreements that became effective in December 2016.⁶

² Order Requiring Additional Information, December 29, 2016, at 4 (Order No. 3714).

³ Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0010 Through 0247, December 28, 2016.

⁴ Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0010-0247, December 28, 2016, at 1 (December 28, 2016 Motion).

⁵ Response of the United States Postal Service to Commission Order No. 3714, with Portions Filed Under Seal, January 6, 2017 (Response to Order No. 3714).

⁶ Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0248-0250, January 6, 2017 (January 6, 2017 Motion); *see also* Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0248-0252, January 6, 2017, at 2 (Notice 0248-0252). The Postal Service also filed two PMNPR agreements, which became effective in early January 2017, within 10 days of their effective dates. Notice 0248-0252 at 2.

The Commission remained concerned regarding the Postal Service's admitted lack of inter-departmental coordination and oversight of PMNPR review that occurred throughout Calendar Year (CY) 2016.⁷ Therefore, the Commission required the Postal Service to make an additional filing within two weeks stating that all PMNPR agreements in effect during CYs 2011 through 2016 (and their respective effective dates) were identified by filing with the Commission in this docket. Order No. 3735 at 4. The Commission also required a certification from a representative of the Postal Service's Sales & Customer Relations Department stating that it had identified all PMNPR agreements in effect during CYs 2011 through 2016 (and their respective effective dates) to the Postal Service's Law Department. *Id.*

On January 23, 2017, the Postal Service stated that it "has completed an exhaustive search of all its known sources for contracts over the past two weeks, going back to CY 2011, and has located five expired PMNPR agreements and one active PMNPR agreement that were not filed with the Commission."⁸ Identifying these PMNPR agreements by serial numbers, the Postal Service provided effective dates, discussed potential sources of error, and reaffirmed that the newly established procedures would improve the Postal Service's ability to track PMNPR agreements and prevent similar errors.⁹ The Postal Service included a Sales Department representative certification that the Sales Department had completed an exhaustive records search and identified all PMNPR agreements in effect during CYs 2011 through 2016 to the Law Department. *Id.* Attachment A. With respect to the newly-identified active PMNPR agreement (serial

⁷ Order Requiring Certification, January 9, 2017, at 3-4 (Order No. 3735).

⁸ Notice of the United States Postal Service of Certification Provided in Response to Commission Order No. 3735, with Portions Under Seal, January 23, 2017, at 1 (Response to Order No. 3735).

⁹ Response to Order No. 3735 at 1-4. The Postal Service filed an unredacted copy of all six newly-identified PMNPR agreements under seal. *Id.* at 2.

number ending in 0253), the Postal Service also filed a separate notice, motion for late acceptance, and sealed financial model inputs.¹⁰

III. COMMISSION ANALYSIS

Standard. The Commission may grant motions to extend the time to make a filing “upon motion for good cause shown.” 39 C.F.R. § 3001.16. Although this rule acknowledges that requests for additional time to make a filing may occur, the Commission expects that such requests should be infrequent. Moreover, the Commission expects that what Postal Service practice has styled as motions for late acceptance, which seek an extension of the filing deadline *after* that deadline has passed, will be rare. In any event, any motion for an extension of time (whether filed before or after the filing deadline at issue) must demonstrate good cause.

Pending motions. The December 28, 2016 Motion did not demonstrate good cause for extending the time for filing notice of the PMNPR agreements. Notably, the December 28, 2016 Motion presented a vague discussion with respect to accountability, steps to minimize future errors, and the delay in notifying the Commission of the backlog. The Response to Order No. 3714 represented a significant improvement in showing good cause because it presented a specific and candid discussion of these issues. After it became apparent that the attempted omnibus filing was incomplete, Order No. 3735 prompted the Postal Service to ensure a reasonably expeditious clearance of the backlog. Although this review discovered additional PMNPR agreements remained in the backlog, the Postal Service provided a specific and candid discussion of the potential sources of the errors, reaffirmed that the new process would prevent these types of errors in the future, and represented that the search had been exhaustive. Response to Order No. 3735 at 1, 4; *id.* Attachment A. Moreover, the agreements for which late acceptance is sought are based on Commission-approved

¹⁰ Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0253, January 23, 2017; Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0253, January 23, 2017; Response to Order No. 3735 at 2.

model language and within Commission-approved rate ranges, which minimizes the potential prejudice to competitors. For these reasons, the three motions are granted.

Other requirements imposed by Order No. 661. Although the motions focus on one particular filing requirement imposed by Order No. 661, all requirements imposed by Order No. 661 remain in effect. The Postal Service must:

- File a copy of each PMNPR agreement along with the financial model inputs used to generate rates for each PMNPR agreement with the Commission within 10 days of the effective date of the applicable PMNPR agreement
- Obtain advance approval from the Commission to change the rates or financial model
- File a copy of any notice to a mailer of a change in rates pursuant to Article II of the model contract with the Commission
- Notify the Commission of the effective date for each PMNPR agreement
- Inform the Commission in advance of early termination of a PMNPR agreement
- Inform the Commission of the new effective date for a renewed PMNPR agreement and
- File with the Commission within 30 days of the expiration of each PMNPR agreement costs, volumes, and revenues disaggregated by weight and zone associated with the applicable PMNPR agreement, including any penalties paid.

Order No. 661 at 9-10.

Additional materials related to five expired contracts. To bring the Postal Service into compliance with Order No. 661, the Postal Service must make additional filings under seal in this docket by February 3, 2017. For PMNPR agreements with serial numbers ending in 0254-0258, the Postal Service must file the financial model inputs used to generate rates and file the costs, volumes, and revenues disaggregated by weight and zone associated with that contract, including any penalties paid. See *id.* at

9. The Commission expects that the Postal Service will comply with all requirements of Order No. 661.¹¹

Quarterly certification process. The Commission remains optimistic that the oversight and interdepartmental coordination failures that occurred will not continue because the Postal Service has presented a rational plan to comply with Order No. 661's notification requirement. Because the Postal Service's plan did not address Order No. 661's other filing requirements, additional concerns related to future compliance with Order No. 661 remain. Therefore, to facilitate the Commission's monitoring of whether the Postal Service's implementation of its proposed plan will comply with Order No. 661, the Commission is requiring a quarterly certification in this docket.

On a quarterly basis, the Postal Service shall file a notice stating that the Postal Service complied with all requirements of Order No. 661 applicable to all PMNPR agreements in effect during the prior fiscal quarter. The notice shall include a letter from a Postal Service Sales Department representative certifying that the Sales Department has identified all PMNPR agreements in effect during the prior fiscal quarter, and their respective effective dates, to the Postal Service's Law Department. Each notice and accompanying certification letter shall be filed in this docket within 30 days of the completion of each quarter of the fiscal year, with the first notice due May 1, 2017.

This quarterly notification and certification requirement will remain in effect unless altered by further order of the Commission. If the quarterly notification and certification requirement demonstrates that the Postal Service's new process is insufficient to comply with Order No. 661, the Commission may take appropriate action, including cancellation of affected PMNPR agreements.

¹¹ Additionally, given the Postal Service's representations concerning the effective dates of the five newly-identified expired agreements, it appears that four agreements terminated earlier than scheduled and that one agreement was renewed beyond one year. See Response to Order No. 3735 at 3-4. No applicable notices of early termination or renewal were filed.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0010-0247, filed December 28, 2016, the Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail Non-Published Rates Serial Number Ending: 0248-0250, filed January 6, 2017, and the Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0253, filed January 23, 2017, are granted.
2. All requirements imposed by Order No. 661 remain in effect.
3. For PMNPR agreements with serial numbers ending in 0254-0258, the Postal Service must file the financial model inputs used to generate rates and file the costs, volumes, and revenues disaggregated by weight and zone associated with that contract, including any penalties paid. The Postal Service must make these additional filings in this docket by February 3, 2017.
4. On a quarterly basis, the Postal Service shall file a notice stating that the Postal Service complied with all requirements of Order No. 661 applicable to all PMNPR agreements in effect during the prior fiscal quarter. The notice shall include a letter from a Postal Service Sales Department representative certifying that the Sales Department has identified all PMNPR agreements in effect during the prior fiscal quarter, and their respective effective dates, to the Postal Service's Law

Department. Each notice and accompanying certification letter shall be filed in this docket within 30 days of the completion of each quarter of the fiscal year, with the first notice due May 1, 2017.

By the Commission.

Stacy L. Ruble
Secretary